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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.****Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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CAMPBELL et al. *v.* WATKINS' EX'RS et al.

Sept. 10, 1906.

[54 S. E. 989.]

**Deeds—Special Warranty—Quiet Possession.**—A covenant in a deed that "said party of the second part shall have quiet possession of the land and premises \* \* \* with covenants of special warranty" is merely a covenant of special warranty for quiet possession.

[Ed. Note.—For cases in point, see vol. 14, Cent. Dig. Covenants, §§ 44, 48.]

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ELLIS *v.* WHITACRE et al.

Sept. 20, 1906.

[54 S. E. 993.]

**Equity—Bill—Amendment.**—The owner of land conveyed it to complainant in trust, to secure the payment of certain debts, and subsequently conveyed a house and lot to another as trustee to secure a debt. Thereafter complainant filed a bill to establish the liens on the land with the order of their priorities, and subsequently complainant on an amended bill obtained an injunction forbidding the other trustee from selling the house and lot. The writ was not served in time to effectuate its purpose, and thereafter certain creditors petitioned in the suit, praying an annulment of the sale of the house and lot made by the other trustee. Held, that it was error to set aside the sale as the amendment set up a new case, and complainant had no interest therein, and such objections could not be removed by the introduction of other parties having interests.

[Ed. Note.—For cases in point, see vol. 19, Cent. Dig. Equity, §§ 561-563.]

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CRANES NEST COAL & COKE CO. *v.* MACE.

June 28, 1906.

[54 S. E. 479.]

**Master and Servant—Liability for Injuries—Assumption of Risk—Evidence—Sufficiency.**—In an action for injuries by falling coal, by a miner employed at so much a run to assist in operating a machine to undercut the exposed face of the vein, it appeared by plaintiff's testimony that, in order to make more runs, he neglected, before commencing to undercut, to test the overhanging coal, which caused the accident, and which had been improperly left in position by other

employees; that the danger of the coal falling was known to him; and that a test as to its safety could have been made by tapping with a pick. An experienced miner testified that when the coal bulged, it was the duty of the undercutter to report the fact to the foreman and to stay out of danger until the vein was properly faced. Held to show an assumption of risk, precluding recovery.

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RICHARDSON *v.* PIERCE et al.

June 28, 1906.

[54 S. E. 480.]

**Fraudulent Conveyances—Remedies of Creditors—Burden of Proof—Subsequent Creditor.**—Where, in an action by subsequent creditors to set aside a deed to a wife as in violation of Code 1904, § 2458, prohibiting any conveyances with an intent to hinder or defraud creditors, it appears that, though the deed may have been procured by the husband's money and credit, yet the husband was not indebted at the time of the transaction, it must be further shown by the plaintiff that the transaction was in anticipation of future indebtedness and to defraud future creditors.

[Ed. Note.—For cases in point, see vol. 24, Cent. Dig. Fraudulent Conveyances, § 806.]

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McMURRAY et al. *v.* DIXON.

June 28, 1906.

[54 S. E. 481.]

**1. Actions—Survival—Joinder of Parties.**—Where an action of ejectment was brought in the name of a husband and wife and the husband died, the cause of action survived to the wife, as provided by Code 1904, § 3306.

[Ed. Note.—For cases in point, see vol. 1, Cent. Dig. Abatement and Revival, § 318; vol. 17, Cent. Dig. Ejectment, § 118.]

**2. Limitation of Actions—Disability of Party—Ejectment—Statute Applicable.**—Where plaintiff purchased certain land in controversy while under coverture in 1874, and took actual possession under her title papers and continued under coverture until after suit brought in ejectment, her right could only be barred by limitations under Code 1904, § 2981, providing that, where the person is under disability when a cause of action arises, no action shall be brought to recover land but within 20 years next after the time at which such right shall have accrued.

**3. Same—Recovery of Land—Possession—Burden of Proof.**—A party ousted from possession of land may recover the premises in ejectment on his possession merely, unless the defendant who entered and ousted plaintiff has title himself or authority to enter under the title.

[Ed. Note.—For cases in this point, see vol. 17, Cent. Dig. Ejectment, §§ 16-21, 30-41.]